

NTSB Order No. EA-3786

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 27th day of January, 1993

Docket SE-12864

December 30.<sup>2</sup> No explanation for the tardiness of the notice of appeal, or motion for leave to file a notice out of time, accompanied the December 24 filing. However, counsel for respondent, apparently in response to the Administrator's contentions in his reply brief that both of respondent's appeals to the Board (i.e., from the revocation order to the Board and from the law judge's decision to the Board) were untimely, represents in a January 15, 1993 facsimile transmission that he was "out of the State of Washington from December 10, 1992 through December 22, 1992." While no reason is given for bringing this information to the Board's attention, we assume counsel's purpose is to suggest a basis for excusing the untimeliness of the notice of appeal from the law judge's decision. Any such suggestion would be unavailing.

Counsel's absence from the state during the period within which the notice of appeal was due neither establishes that he was unaware of the law judge's decision before he returned nor that, if he was not aware of the decision, he should be excused for not filing the notice on time. See, e.g., Administrator v. Givens, NTSB Order EA-2928 at 3 (1989), citing, among other cases, Administrator v. Waingrow, NTSB Order EA-2041 (1984), Administrator v. Donnallco, Inc., NTSB Order EA-2666 at 5, n. 8 (1988) ("The fact that counsel was out of the country for an extended period of time serves as no excuse for noncompliance with the Board's rules.") and Administrator v. Folh, NTSB Order EA-2612 (1987).<sup>3</sup> Since counsel apparently took no steps to ensure, while he was away from his office, that information relevant to the case would be communicated to him for any necessary action, he cannot validly claim that any lack of knowledge about the issuance of the law judge's decision relieved him of his responsibility for timely compliance with all procedural requirements.<sup>4</sup>

<sup>2</sup>As the Administrator points out in his reply brief, under Section 821.57(a) of the Board's Rules of Practice, 49 CFR Part 821, respondent had 2 days within which to file a notice of appeal. Moreover, as the Administrator notes, even if the notice of appeal had been due on December 24, respondent's appeal would still be subject to dismissal because it was not perfected by the filing of an appeal brief within 5 days thereafter. See Section 821.57(b).

<sup>3</sup>The Board in Givens, *supra*, stated its opinion that "[t]hese cases reflect our judgment that it is incumbent on parties to Board proceedings to plan and arrange their affairs during the pendency of the adjudicatory process so as to protect their appeal rights."

<sup>4</sup>Counsel's failure to keep himself informed about the case from December 10 to 22 is especially difficult to understand in light of the apparent existence, in another firm, of a co-counsel

Inasmuch as respondent's untimeliness in filing a notice of appeal from the law judge's decision does not appear to be excusable for good cause shown, his appeal will not be entertained. See Administrator v. Hooper, NTSB Order EA-2781 (1988)

**ACCORDINGLY, IT IS ORDERED THAT:**

The respondent's appeal is dismissed.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above order.

(..continued)  
for respondent. That individual on December 18, 1992 filed respondent's answer to the emergency revocation order. By that date, of course, the law judge had already dismissed the appeal from the Administrator's order.